

**Subordination, Non-Disturbance and
Attornment Agreement
Of Operating Lease**

**U.S. Department of Housing
and Urban Development**
Office of Healthcare Programs

OMB Approval No. 9999-9999
(exp. mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 2.25 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Privacy Act Notice: The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in the form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

(Space above this line for Recorder's Use)

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

NOTICE: THE SUBORDINATION PROVIDED FOR IN THIS AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE INTEREST CREATED BY SOME OTHER OR LATER INSTRUMENT.

THIS AGREEMENT, made as of this ___ day of _____, 20___, by and between _____ (~~"Mortgagor"~~ or "Lessor(Borrower)"), as lessor under the lease hereinafter described, and _____ ("~~Operator"~~ or "Lessee"), lessee under the aforementioned lease, in favor of _____ ("~~FHA Mortgagee~~Lender"), the owner and holder of the Mortgage hereinafter described.

WITNESSETH:

WHEREAS, ~~Lessor~~Borrower has or will execute that certain ~~Deed of Trust~~HEALTHCARE [MORTGAGE, DEED OF TRUST, DEED TO SECURE DEBT, SECURITY DEED, OR OTHER DESIGNATION AS APPROPRIATE IN

~~Version: 11/1/09~~

~~JURISDICTION]~~ with ~~Assignment of Rents~~ ASSIGNMENT OF LEASES AND REVENUE AND SECURITY AGREEMENT, dated as of _____, 20__ (the "~~Mortgage~~Security Instrument"), in favor of ~~FHA Mortgage Lender~~ and covering certain real property (the "~~Property Land~~") located in the City of _____ County of _____, State of _____, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"), and which ~~Mortgage~~Security Instrument is being recorded concurrently herewith; and

WHEREAS, ~~Lessor~~Borrower and ~~Lessee~~Operator entered into that certain unrecorded Lease dated _____, 20__, as it may thereafter be amended (the "Lease"), covering the Improvements for the term and upon the conditions set forth therein; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Lease, all terms and conditions set forth in the Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of ~~Lessee~~Operator and ~~Lessor~~Borrower thereunder shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the ~~Mortgage~~Security Instrument, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and ~~FHA Mortgage Lender~~ thereunder, and shall hereafter be junior and inferior to the lien and charge of the ~~Mortgage~~Security Instrument. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the ~~Mortgage~~Security Instrument.

2. ~~FHA Mortgage Lender~~ consents to the Lease.

3. In the event ~~FHA Mortgage Lender~~ or any other purchaser at a foreclosure sale or sale under private power contained in the ~~Mortgage~~Security Instrument, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of ~~Lessor~~Borrower under the Lease by reason of any foreclosure of the ~~Mortgage~~Security Instrument or the acceptance by ~~FHA Mortgage Lender~~ of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:

(a) ~~Lessee~~Operator shall be bound to ~~FHA Mortgage Lender~~ or such other purchaser under all of the terms, covenants and conditions of the Lease for the

remaining balance of the term thereof, with the same force and effect as if ~~FHA Mortgagee Lender~~ or such other purchaser were the lessor under such Lease, and ~~Lessee Operator~~ does hereby agree to attorn to ~~FHA Mortgagee Lender~~ or such other purchaser as its lessor, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon ~~FHA Mortgagee Lender~~ or such other purchaser succeeding to the interest of ~~Lessor Borrower~~ under the Lease.

(b) Subject to the observance and performance by ~~Lessee Operator~~ of all the terms, covenants and conditions of the Lease on the part of the ~~Lessee Operator~~ to be observed and performed, ~~FHA Mortgagee Lender~~ or such other purchaser shall recognize the leasehold estate of ~~Lessee Operator~~ under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if ~~FHA Mortgagee Lender~~ or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that ~~FHA Mortgagee Lender~~ or such other purchaser shall not be (i) liable for any act or omission of ~~Lessor Borrower~~ or any other prior lessor, (ii) obligated to cure any defaults of ~~Lessor Borrower~~ or any other prior lessor under the Lease which occurred prior to the time that ~~FHA Mortgagee Lender~~ or such other purchaser succeeded to the interest of ~~Lessor Borrower~~ or any other prior lessor under the Lease, (iii) subject to any offsets or defenses which ~~Lessee Operator~~ may be entitled to assert against ~~Lessor Borrower~~ or any other prior lessor, (iv) bound by any payment of rent or additional rent by ~~Lessee Operator~~ to ~~Lessor Borrower~~ or any other prior lessor for more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of ~~FHA Mortgagee Lender~~ or such other purchaser, or (vi) liable or responsible for or with respect to the retention, application and/or return to ~~Lessee Operator~~ of any security deposit paid to ~~Lessor Borrower~~ or any other prior landlord, whether or not still held by ~~Lessor Borrower~~, unless and until ~~FHA Mortgagee Lender~~ or such other purchaser has actually received for its own account as lessor the full amount of such security deposit. The non-disturbance provisions of this Section 3(b) are conditioned upon ~~Lessor Borrower~~ at all times having no identity of ownership interest with any of the ~~Lessee Operator~~, any management agent at the ~~Property Land~~, any service provider to the ~~Property Land~~, or any sub-contractor or supplier to the ~~Property Land~~.

4. ~~Lessee Operator~~ hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of ~~Lessor Borrower~~ thereunder or the occurrence of any other event without first giving to ~~FHA Mortgagee Lender~~ prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, ~~Lessee Operator~~ shall not take any action to terminate the Lease if ~~FHA Mortgagee Lender~~ (a) within thirty (30) days after service of such written notice on ~~FHA Mortgagee Lender~~ by ~~Lessee Operator~~ of its intention to terminate the Lease, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession

of the leased premises (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless and until ~~FHA Mortgagee Lender~~ has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on ~~FHA Mortgagee Lender~~ by ~~Lessee Operator~~ of its intention to terminate.

5. For the purposes of facilitating ~~FHA Mortgagee's Lender's~~ rights hereunder, ~~FHA Mortgagee Lender~~ shall have, and for such purposes is hereby granted by ~~Lessee Operator~~ and ~~Lessor Borrower~~, the right to enter upon the ~~Property Land~~ and the Improvements thereon for the purpose of effecting any such cure.

6. ~~Lessee Operator~~ hereby agrees to give to ~~FHA Mortgagee Lender~~ concurrently with the giving of any notice of default under the Lease, a copy of such notice by mailing the same to ~~FHA Mortgagee Lender~~ in the manner set forth hereinbelow, and no such notice given to ~~Lessor Borrower~~ which is not at or about the same time also given to ~~FHA Mortgagee Lender~~ shall be valid or effective against ~~FHA Mortgagee Lender~~ for any purpose.

7. Subordination of Lease to ~~Mortgage Security Instrument~~ and Regulatory Agreements and Regulation by the U.S. Department of Housing and Urban Development ("HUD").

(a) The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the ~~Mortgage Security Instrument~~ on the ~~Lessor's Borrower's~~ interest in the ~~Property Land~~ in favor of ~~FHA Mortgagee Lender~~, its successors and assigns insofar as it affects the real and personal property comprising the ~~Property Land~~ (and not otherwise owned, leased or licensed by ~~Lessee Operator~~) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, (ii) that certain Regulatory Agreement for Multifamily Housing Projects between ~~Lessor Borrower~~ and HUD to be recorded against the ~~Property Land~~, and (iii) that certain Regulatory Agreement Nursing Homes between ~~Tenant Operator~~ and HUD to be recorded against the Premises (the "~~Lessee's Operator's~~ Regulatory Agreement").

(b) The parties to the Lease agree to execute and deliver to ~~FHA Mortgagee Lender~~ and/or HUD such other instrument or instruments as the ~~FHA Mortgagee Lender~~ and/or HUD, or their respective successors or assigns, shall reasonably request to effect and/or confirm the subordination of the Lease to the lien of the ~~Mortgage Security Instrument~~ and the above-described Regulatory Agreements. To the extent that any provision of the Lease shall be in conflict with the HUD Program Obligations (as such term is defined below), the HUD Program Obligations shall be controlling.

(c) In the event HUD, at a foreclosure sale or sale under private power contained in the MortgageSecurity Instrument, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of LessorBorrower under the Lease by reason of any foreclosure of the MortgageSecurity Instrument or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:

(i) HUD can terminate the Lease (A) for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease, (B) for any violation of Lessee'sOperator's Regulatory Agreement or other HUD Program Obligations or Health Care Requirements (both as defined below) that is not cured within thirty (30) days after receipt by LesseeOperator of written notice of such violation; provided, however, that if such cure reasonably requires more than thirty (30) days to cure, HUD may not terminate the Lease if LesseeOperator commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion, or (C) if HUD, as a result of the occurrence of either of the events described in the foregoing items (A) or (B), is required to advance funds for the operation of the facility located on the PropertyLand.

(ii) As used in this Agreement:

(A) "HUD Program Obligations" shall mean all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD handbooks, notices and mortgagee letters that apply to the PropertyLand, including all updates and changes to such handbooks, notices and mortgagee letters that apply to the PropertyLand, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.

(B) "Health Care Requirements" shall mean, relating to the PropertyLand, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions or agreements, in each case, pertaining to or concerned with the establishment, construction, ownership, operation, use or occupancy of the PropertyLand or any part thereof as a skilled nursing facility, and all material permits, licenses and authorizations and regulations relating thereto, including all material rules, orders, regulations and decrees of and agreements with health care authorities pertaining to the PropertyLand.

(d) To the extent there is any inconsistency between the terms of this Subordination, Non-Disturbance and Attornment Agreement, and the Lease, the terms of this Subordination, Non-Disturbance and Attornment Agreement shall be controlling.

8. For purposes of any notices to be given to FHA MortgageLender hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA MortgageLender at the following address:

[Insert Address]

or to such other address as ~~FHA-MortgageeLender~~ may hereafter notify ~~LesseeOperator~~ in writing by notice sent to ~~LesseeOperator~~ as aforesaid at ~~Lessee'sOperator's~~ address at the ~~PropertyLand~~, or such other address as ~~FHA-MortgageeLender~~ may hereafter be advised of in writing by notice sent to ~~FHA-MortgageeLender~~ as aforesaid.

9. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.

10. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.

11. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the _____.

[SEE ATTACHED SIGNATURE PAGES]

**SIGNATURE PAGE
TO
SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT OF OPERATING LEASE**

~~IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.~~

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EXHIBIT “A”

LEGAL DESCRIPTION